

REMARKS

Claims 1 and 15 have been amended. New claims 25-32 have been added. Support for the amended claims and the new claims may be found at least between line 1 on page 9 and line 9 on page 12 of the Patent Application. No new matter has been added. A Request for Continued Examination has been provided with the present response and so Applicant respectfully requests that the Examiner enter and consider the amendments. Pursuant to the proposed amendments, claims 1-3, 6-16, and 18-32 are pending in the present application.

In the Office Action, the Examiner indicated that claims 7-13 would be allowed if rewritten in independent form including all the limitations of the base claim and any intervening claims. Claim 7 has been rewritten in independent form including all the limitations of the base claim and any intervening claims. Claim 8-13 depend from claim 7. Applicant submits that claims 7-13 are in condition for allowance.

In the Office Action, claims 1 and 15 were rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by the ETSI publication. Claims 2-3, 6, 14, 16, and 18-24 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over the ETSI publication in view of Koulakiotis, et al. (U.S. Patent Application Publication No. 2003/0104801). Pursuant to the proposed amendments, the Examiner's rejections are respectfully traversed.

The ETSI publication describes a multicast mode that allows unidirectional point-to-multipoint transmission of multimedia data from a single source point to a multicast group in a multicast area. See §4.2 of the ETSI publication. Users can subscribe to a multicast subscription group and may then discover active or future multicast services. A Home Environment can also join the user to the selected multicast group if the user has previously subscribed to this multicast group. See §4.2.1 of the ETSI publication. The Home Environment broadcasts multicast

services to multicast areas, which may be determined based on multicast group members being present in the multicast area. See §5.2.1 of the ETSI publication.

However, the ETSI publication does not describe or suggest any rate splitting techniques. Accordingly, Applicant respectfully submits that the ETSI publication does not describe or suggest assigning one of a plurality of service rates to at least one of a plurality of subscription-based service types, as set forth in independent claims 1 and 15. Furthermore, the ETSI publication does not describe or suggest selecting one of the plurality of service rates for assignment to a subscription-based service type based on network infrastructure requirements and/or the geographical distribution of subscribers, as set forth in independent claims 1 and 15.

For at least the aforementioned reasons, Applicant respectfully submits that claims 1 and 15 are not anticipated by the ETSI publication and requests that the Examiner's rejections of claims 1 and 15 under 35 U.S.C. § 102(e) be withdrawn.

Moreover, it is respectfully submitted that the pending claims are not obvious in view of the ETSI publication and Koulakiotis. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). As discussed above, the ETSI publication does not describe or suggest any rate splitting techniques. Accordingly, Applicant respectfully submits that the ETSI publication does not describe or suggest assigning one of a plurality of service rates to at least one of a plurality of subscription-based service types, as set forth in independent claims 1 and 15. Furthermore, the ETSI publication does not describe or suggest selecting one of the plurality of service rates for assignment to a subscription-based service type based on network infrastructure requirements and/or the geographical distribution of subscribers, as set forth in independent claims 1 and 15.

The Examiner relies upon Koulakiotis to describe various aspects of multicasting. However, Koulakiotis is primarily concerned with charging users for different services and does not discuss rate splitting based on network infrastructure requirements and/or the geographical distribution of subscribers. Koulakiotis therefore fails to remedy the aforementioned fundamental deficiencies of the ETSI publication. Applicant respectfully submits that the cited references fail to teach or suggest all the limitations set forth in pending claims. Furthermore, the cited references fail to provide any suggestion or motivation to modify the prior art of record to arrive at the claimed invention. To the contrary, the ETSI publication is only concerned with locating multicast group members within multicast areas. Accordingly, the ETSI publication provides no suggestion or motivation for modifying the prior art of record to include performing rate splitting based on network infrastructure requirements and/or the geographical distribution of subscribers, as set forth in the pending claims. Applicant also submits that the Examiner has not provided a reason that a person of ordinary skill in the art will be motivated to modify and/or combine the cited references to arrive at the claimed invention.

For at least the aforementioned reasons, Applicant respectfully submits that the pending claims are not obvious over the prior art of record and requests that the Examiner's rejections of claims 2-3, 6, 14, 16, and 18-24 under 35 U.S.C. § 103(a) be withdrawn.

New claims 25-32 also set forth embodiments of techniques for performing rate splitting based on network infrastructure requirements associated with a plurality of subscribers. Accordingly, for at least the reasons discussed above, Applicant respectfully submits that claims 25-32 are in condition for allowance.

For the aforementioned reasons, it is respectfully submitted that all claims pending in the present application are in condition for allowance. The Examiner is invited to contact the

undersigned at (713) 934-4052 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

Date: June 5, 2007

/MARK W. SINCELL/
Mark W. Sincell, Ph.D.
Reg. No. 52,226
Williams Morgan & Amerson, P.C.
10333 Richmond Avenue, Suite 1100
Houston, TX 77042
(713) 934-7000
(713) 934-7011 (Fax)

AGENT FOR APPLICANTS